

First Supplement to Memorandum 97-36

Public Utility Deregulation: Issues Affecting CLRC Report

Attached to this supplemental memorandum are the following items:

	<i>Exhibit p.</i>
1. Pacific Bell Letter	1
2. Southern California Edison Letter	3
3. PUC Staff Draft Report on Code Revisions	5

These materials raise the issues discussed below.

Role of CLRC

Pacific Bell and Southern California Edison urge the Law Revision Commission to take an active role in drafting specific legislation for Code reform.

The Law Revision Commission has a narrowly limited mandate in this area. SB 960 provides that the PUC is to report on Code revision by June 30 “in consultation with the Law Revision Commission”. **In order for the Law Revision Commission to recommend specific legislation for enactment, further authorization by the Legislature would be necessary.**

Deregulation v. Competition

Pacific Bell’s basic position is that, since the market for local telephone service is open to competition now, deregulation is appropriate now. Thus Pacific Bell disagrees with the Law Revision Commission’s tentative conclusion that criteria and standards should be established for deregulation.

The staff does not believe the Law Revision Commission intends to foreclose the possibility that the criteria and standards could be as simple as: When markets are open to competition, there shall be no further regulation. Our only thought is that the criteria and standards should be clearly stated in advance and not be left to ad hoc decisionmaking. **This could be made more clear in our report.**

The more significant issue, we think, is the one raised by Pacific Bell in the main memorandum — who is to make the decision as to criteria and standards, the Public Utilities Commission or the Legislature?

Publication of Charts

The charts included in the Public Utilities Commission's staff draft on Code revision will be limited to those sections that the PUC believes should be revised. It will not include matters that have been raised by stakeholders but rejected by the PUC.

This accentuates the question whether the Law Revision Commission should publish more complete charts as part of its consultation. The Law Revision Commission's draft report identifies areas of disagreement generally, without reference to specific Code sections.

The main problems with publication of charts are (1) the positions of the parties shift as we go through this process (e.g., PUC now agrees with some suggestions it initially disagreed with), and (2) time and resource limitations make it difficult for the Law Revision Commission staff to update the charts satisfactorily. We must also ask whether, realistically, the charts will be of significant benefit to the Legislature at this stage in the process.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

J. A. Guedner
Vice President
Regulatory

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San Francisco, California 94105
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PACIFIC BELL
A Pacific Telesis Company

June 6, 1997

Law Revision Commission
RECEIVED

JUN 09 1997

Nathaniel Sterling, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

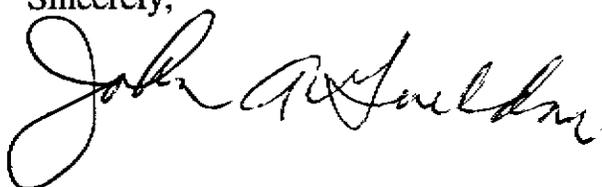
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Dear Mr. Sterling:

Thank you for the opportunity to comment on the California Law Revision Commission (CLRC) draft report on Public Utility Deregulation. In general, we found the report to be balanced and fair in representing the different perspectives on code revision expressed by Pacific Bell and other parties. We strongly urge the CLRC to assume a leadership role in revising an outdated and antiquated Public Utilities Code. The CLRC should consider drafting specific legislation to accomplish code revisions for legislative committees to consider later this year. Policies for the transition period are more appropriately designed by the Legislature than by the CPUC. Services should be exempted from the code sections that are no longer appropriate or effective due to competition, as detailed in our submission to the CLRC on May 14, 1997.

We are still concerned, as noted in our May 2, 1997, comments, that your recommendation requiring the CPUC to establish criteria and standards to determine when competition exists for each phase of deregulation would unnecessarily delay competition in the California marketplace. California can ill afford to wait until some undefinable measure of competition occurs in every market and for every product before updating its laws. Both the California legislature and U. S. Congress have opened all telecommunications markets to competition; the Telecommunications Act of 1996 has mandated full competitive protections. There is no need for incremental revisions that will leave the CPUC burdened with hotly contested issues that are complicated by competitors' attempts to "game" the regulatory process.

Sincerely,





Robert G. Foster
Senior Vice President

Law Revision Commission
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June 9, 1997

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Mr. Nathaniel Sterling
Executive Director
California Law Revision Commission
4000 Middlefield Road Room D-1
Palo Alto, CA 94303-4739

Re: Report on Public Utilities Deregulation

Dear Mr. Sterling:

Southern California Edison Company ("Edison") appreciates the effort the California Law Revision Commission has put into its Report on Public Utilities Deregulation, pursuant to S.B. 960. We particularly would like to commend the Law Revision Commission for the fair and balanced forum it has provided, and its efforts to accurately and fairly portray the views of parties.

Edison would like to join in Pacific Bell's request of June 6, 1997 in urging your commission to assume a leadership role in updating an outdated and antiquated Public Utilities Code. Section 12 of S.B. 960 provides that by June 30, 1997 "the Public Utilities Commission in consultation with the Law Revision Commission shall submit a report to the Legislature on needed revisions of the Public Utilities Code." However, the CPUC's draft report does not include a specific proposal with legislation for the Legislature to consider. We agree with your report that the procedure followed by the CPUC left the Law Revision little time to perform its role. As your report notes, the CPUC has indicated that "it is the Commission's desire to continue discussions into the 1998 session."

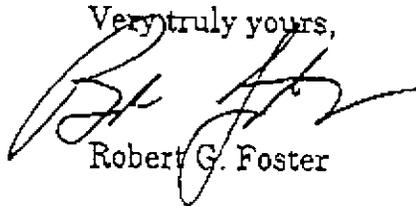
Therefore, we request that the Law Revision Commission work with the parties to draft legislation for legislative committee consideration later this year. First, as you report, the CPUC is not resourced sufficiently to draft needed revisions. Moreover, the CPUC is itself an interested party in statutory reform - an independent, disinterested agency such as the Law Revision Commission should be responsible for drafting the needed statutory revisions. The Law Revision Commission has the expertise, and statutory mission, to revise obsolete code and propose needed reforms to the Legislature. In areas where there is disagreement between the CPUC and the parties, the Law Revision Commission serves as a

Mr. Nathaniel Sterling
Page 2
June 9, 1997

neutral and unbiased mediator. In some areas, the disagreement represents a drafting problem, where the Law Revision Commission's expertise can contribute significantly. In other areas, the Law Revision Commission can serve as an unbiased reporter and provide the parties views in a manner that will allow the Legislature to focus on the policy considerations.

Again, we would like to thank you for your efforts to date and hope that we can continue to work with you and your Commission on a report that would provide draft legislation for legislative committee consideration.

Very truly yours,



Robert G. Foster

JAM:lan.LW971600.003

cc: Senator Steve Peace
Assemblyman Bill Leonard
Jean Veith (CPUC)

Staff Draft 6/9/97

**Report to the Legislature
on
Revisions of the Public Utilities Code
Resulting from Restructuring of Regulated
Industries**

June 30, 1997

California Public Utilities Commission

Staff Draft 6/9/97

**Report to the Legislature on Revisions of the Public Utilities Code
Resulting from Restructuring of Regulated Industries**

Part I – **Discussion**

Part II – **Table: Revisions to Existing Law Recommended
by the CPUC**

Part III – **Draft Language**

**Attachment 1: Revisions to Existing Law
(by Law Revision Commission Policy Issue Categories)**

Attachment 2: Stakeholders' Comments on CPUC Draft Report

Staff Draft 6/9/97

**Report to the Legislature on Revisions of the Public Utilities Code
Resulting from Restructuring of Regulated Industries**

Part I: Discussion

Summary

This report describes a bifurcated approach to comprehensive review and revision of the California Public Utilities Code. The California Public Utilities Commission (CPUC) recommends that the Legislature support development of a new, substantially revised Code, reorganized to separately group all provisions particular to the CPUC's general authority, its specific oversight of each regulated industry (on an industry by industry basis), its consumer protection jurisdiction, and its authority to order fines or other sanctions for violations of law. Recognizing that this endeavor cannot be accomplished within the remainder of the 1997-98 legislative session, the CPUC recommends a number of revisions to existing law which could be made this session. In cases where consensus among stakeholders is believed to exist at this time, the CPUC submits draft language.

Introduction

This is the report of the California Public Utilities Commission (CPUC), prepared and submitted to the Legislature pursuant to the directive in Section 12 of Senate Bill (SB) 960 (Stats. 1996, Ch. 856), which provides:

“On or before June 30, 1997, the Public Utilities Commission in consultation with the Law Revision Commission shall submit a report to the Legislature on needed revisions of the Public Utilities Code that result from the restructuring of the electrical, gas, transportation, and telecommunications industries.” (SB 960, Section 12.)

This report follows upon the earlier report, dated March 31, 1997, required by Section 14 of SB 960. We submitted the March report as a “status update” on our preliminary review of the Public Utilities Code for revisions warranted by the “changing competitive environment in which regulated and unregulated entities are competitors.” (SB 960, Section 14.)

We embarked upon this project with the perspective that Code reform should not be considered—and ultimately could not be accomplished—without thoughtful input from the many stakeholders, including the regulated entities within each industry, their unregulated competitors, and the various customer groups served. We solicited their views, and in the March report, summarized the opinions we received. We also circulated a draft of this report for public comment and the responses we received are reproduced in Attachment 2. These several rounds of public input, together with the observations of the Law Revision Commission, have served to stimulate our thinking and in many instances, have caused us to reconsider our preliminary assessments about how the Code should be revised.

The Public Utilities Code—A Brief Historical Review

In 1911, California voters passed a constitutional amendment reestablishing the Railroad Commission and authorizing the Legislature to confer upon the agency broad regulatory power over public utilities as well. In 1946 the agency was renamed the California Public Utilities Commission to reflect its broader mission.

The “Public Utilities Act” of 1911 (Stats. 1911, Ex. Sess) repealed all prior statutes governing the regulation of railroads and other transportation companies and formed the primary basis for the current Code. The last comprehensive review of public utility regulation in California, in 1951, resulted in enactment of “The Public Utilities Code” (Stats. 1951, ch. 764) which reorganized and modernized the previous body of statutory law. The 1951 codification, an effective restatement of public utility law, is the skeleton upon which all subsequent statute has been grafted. This restatement provided for monopoly-type regulation of all stationary utilities and comprehensive economic and some non-economic (safety and insurance) regulation of transportation entities by the CPUC.

While water remains predominantly a monopoly industry, substantial change has occurred in the electrical, natural gas, telecommunications, and transportation industries in the ensuing forty-six years. The CPUC believes that the time is now ripe for another extensive review and revision of the Code.

The Competitive Status of Regulated Industries

The electrical, natural gas, telecommunications, and transportation industries have all been affected by technological and economic factors which have altered and continue to alter perspectives on the kind of governmental regulation needed, and in some instances, whether regulation is needed at all. The Law Revision Commission's June 12, 1997 report to the Legislature, submitted in its consultative capacity pursuant to Section 12 of SB 960, contains a useful synopsis of each industry, subtitled "Current Status of Restructuring and Deregulation". It does not appear necessary or helpful to duplicate this work. However, in order to set an appropriate context, both substantively and procedurally, for the Code revisions we propose, we include a brief summary of the competitive status of each industry.

Electrical Industry. Last year the Legislature passed and the Governor signed Assembly Bill (AB) 1890 (Stats. 1996, ch. 854), a comprehensive framework for the restructuring of the electric services industry in California, which codified, in large part, the CPUC's 1995 policy decision, Decision (D.)95-12-063, as modified by D.96-01-009. Implementation of AB 1890 will usher in, beginning in 1998, a new era in the provision of electric power and related services. It is anticipated that electric generation will become a competitive service, its price set by market forces, and that "direct access" will become available to all retail customers who desire to choose their electricity suppliers. As contemplated by AB 1890, the CPUC will continue to have regulatory authority over the ongoing monopoly distribution functions of investor-owned electric public utilities and over any generation facilities they retain and operate, and will have expanded consumer protection responsibilities.

Timely implementation of AB 1890 is the CPUC's highest priority electric industry undertaking. As directed by the Legislature, the CPUC has been working to facilitate the attainment of all necessary federal approvals from the Federal Energy Regulatory Commission and to address, in its own proceedings, the numerous other implementation issues.

Natural Gas Industry. The impetus for competition in the natural gas industry, unlike the electric industry, arose at the federal level. Passage in 1978 of the Natural Gas Policy Act led to federal decontrol of wellhead prices by 1985. The CPUC's actions over the decade spanning 1984 to 1993, have resulted in an increasingly competitive natural gas market for California consumers. However, the equivalent of full "direct access" does not exist, as only large consumers and some aggregators can choose their natural gas suppliers--residential and small commercial customers do not have that option at present. Thus, while currently the natural gas industry is more competitive than the electric industry in many respects, upon implementation of AB 1890, the electric industry will assume the lead.

As noted in our 1997 business plan, the CPUC expects to issue, later this summer, a Natural Gas Strategy which will review the tasks remaining to provide all customers with competitive gas supply options and explore other competitive issues, such as equal access to market information by regulated and unregulated entities. The CPUC envisions that state legislation will be necessary to accomplish some of the remaining tasks and that ultimately, its regulatory role vis a vis investor-owned natural gas public utilities is likely to mirror its electric industry oversight responsibilities.

Telecommunications Industry. Consistent with the historical role of the CPUC in regulating monopoly markets, we will continue to play a pivotal role, in the next several years, overseeing the transition from monopoly to competitive local exchange markets. Specifically, we will be reviewing and adjusting our own rules and regulations to respond to increased competition. Pricing rules and tariffing requirements are just two examples of the regulatory construct for telephone corporations we will be examining, and revising or eliminating. Some of the rules are of our own making, while others are embedded in statute. To eliminate statutory requirements, we will need Legislative assistance.

Our dilemma is to balance the interests of competing groups of telecommunications providers, always bearing in mind what is best for consumers. If the rules governing incumbents are eliminated too early, incumbents in high cost areas with no prospect of imminent competition will be free to charge their customers the full cost of providing service and to reduce the scope of services provided. At the same time, incumbents

facing increasing competition over the next several years will find themselves hamstrung by outmoded regulations which will inhibit their ability to respond to that competition. Balancing incumbents' market power against their need to become competitive companies will be a continuing challenge. We believe it is imperative to evaluate the strength of competition in specific markets and regions as a predicate to reducing or eliminating regulation.

In order to determine the appropriate time for eliminating or minimizing long-standing rules or regulations, we believe it will be necessary to develop one or more standards for competition. In our view, the CPUC should develop competitive criteria to be applied in specific markets or specific geographic areas, or both, and once a determination is made that sufficient competition has been reached there, the application of certain categories of rules and regulations should cease. However, it would be unwise and overly restrictive to establish in advance a rigid standard to be applied in all cases. As mentioned above, legislation will be necessary to enable the CPUC to relieve incumbents from compliance with specific statutes.

Transportation Industry. As a result of federal preemption over the years, the states no longer have economic regulatory authority over most railroad operations. With the exception of railroads that are not part of the interstate rail network, the CPUC's regulatory oversight is generally limited to enforcement of safety provisions applicable to railroads, transit systems and grade crossings.

Over the years, the CPUC had considerably lessened the extent to which it regulated the rates of motor carriers of property. Our economic regulatory authority over truckers, however, was mostly terminated by federal law, effective January 1, 1995, which generally preempts state regulation relating to the prices, routes and services of motor carriers that transport property, with the exception of household goods carriers. Last year AB 1683 (Stats. 1996, ch. 1042) transferred all remaining state jurisdiction over such motor carriers to the California Highway Patrol and to the Department of Motor Vehicles. More recent federal legislation has narrowed the exception for household goods carriers. The CPUC continues to have regulatory authority over household goods carriers and over two types of

passenger carriers, passenger stage corporations and charter party carriers. While the CPUC once regulated airlines, that authority has been preempted by federal law.

A New Public Utilities Act

The Goal. The emergence of competition in many regulated public utility sectors, together with federal preemption of the states in a number of areas, has created industry structures very different than those which existed in 1951. The regulatory system designed by the Legislature in 1951, and amended over the ensuing forty-six years to address myriad changed or unique circumstances, needs substantial reform.

We envision a new Public Utilities Act which, when passed by the Legislature and signed by the Governor, will create a substantially reformed set of laws governing public utilities and related entities¹. The new Act should be organized to separately state, at a minimum: 1) a core group of general provisions, definitions, and broadly applicable regulatory authorities vested in the CPUC; 2) by industry², all provisions particular to the CPUC's oversight and regulation of that industry; 3) the CPUC's consumer protection jurisdiction, and 4) a revised statement of the CPUC's authority to order fines or other sanctions for violations of law.

We suggest this industry-specific, "building block" approach because it appears to us to be a conceptually clean and organizationally flexible way to structure a new body of regulatory law which will not only fit current

¹ It should be noted that not all of the existing Public Utilities Code pertains to the jurisdiction of the CPUC. We are proposing revision of those portions of the Code that relate to the CPUC (generally Divisions 1 and 2, and 4 through 4.9). Division 5, for example, contains provisions applicable to municipal utilities; Divisions 10 through 26 generally concern various metropolitan and county transit districts, county transportation commissions, and the like. The CPUC expresses no opinion on whether any of these Divisions of the Code require revision.

² The term "industry" is used loosely to categorize discreet areas of CPUC jurisdiction over different kinds of public utilities and is not limited to the four industries (electric, natural gas, telecommunications, transportation) identified in Section 12 of SB 960.

regulatory regimes but prove adaptable, and so better meet the needs of evolving regulatory paradigms.

As the Law Revision Commission has recognized, the core issue which will confront Code revision in every area except transportation "is whether sufficient competition exists within an industry to permit ... [the dismantling of] the existing monopoly regulatory system". (LRC 5/23/97 staff draft, p. 1.) The Law Revision Commission reached this conclusion after reviewing areas of general agreement and disagreement about Code reform within the four targeted industries. As a tool for exploring stakeholders' views, the Law Revision Commission developed a categorization system for major policy issues (i.e. "direct regulation of service providers", "consumer protection", etc.). This categorization system has been useful in advancing the dialogue among stakeholders to date. We reproduce it in Attachment 1 and group within each category the Code sections we believe applicable.

In our view, comprehensive Code reform can also provide an appropriate opportunity to consider, or reevaluate, various procedural issues, whether more or less directly related to competition in the four targeted industries. For example, regulated energy and telecommunications utilities are providing an increasing array of services, resulting in an enormous increase in advice letter filings (tariff change proposals). In the telecommunications industry, where the number of service providers continues to increase, this impact is particularly pronounced. The CPUC is currently in the process of revising procedures for filing and processing advice letters.³ However, in order to further expedite processing, it may be desirable to enact legislation authorizing the CPUC to delegate additional authority in this area to its staff.

Another example concerns more generic process issues. Last year the Legislature enacted two bills dealing with CPUC procedures (SB 960, Stats. 1996, ch. 856) and with judicial review of the CPUC (SB 1322, Stats. 1996, ch. 855). These bills both become operative on January 1, 1998. It may be appropriate to review these areas as part of the comprehensive Code rewrite we propose. However, before the Legislature revisits the fundamental determinations made by SB 960 and SB 1322, we believe there should be

³ These procedures are contained in the CPUC's General Order 96.

some reasonable period for implementation of these reforms and for consideration of their effectiveness.

The scope of this recommendation is intentionally broad and ambitious and we recognize that Code revision on the scale we suggest will require a significant investment in time and resources. The fact that consensus is generally lacking on the ultimate issue—whether competition within specific industries is sufficient to disband monopoly regulation—underscores this reality. While it is unlikely a total overhaul of the Code can be accomplished during the remainder of the 1997-98 legislative session, we hope, with the assistance of the Legislature, to frame a timeline for such an undertaking. Moreover, we are confident significant progress toward Code reform can be made this session. Below we outline an approach which we believe will yield positive results.

More Immediate Steps. Part II of this report is a table which indicates, by specific code section, our proposals for the revision of existing law, independent of the comprehensive Code rewrite described above. Where we recommend repeal of a section, we indicate that in the table. It should be noted that in those cases where we suggest repeal of a specific statute that is repetitive of a statement of general jurisdiction and appears to have become surplusage with time, it is not our intent to eliminate the CPUC's authority.

Some of our proposals for amendment of existing law can be readily accomplished, and in many such cases we include draft language in Part III of this report. Where consensus exists that a specific section requires revision, but disagreement exists among stakeholders regarding the nature of such revision, we have not attempted to draft language.

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
3 Grandfather provisions for Commissioners in office in 1951 when Division 1 of Code adopted	Delete		This section is obsolete.
224.8 Definition of "non-network railroad"	Add new section defining a "non-network railroad" as a railroad that is not part of "the interstate rail network" as the latter term is used in 49 U.S.C. Sec. 10501 (a)(2)(A)	X	This definition will be used to conform the scope of state economic regulation of railroads to that permitted by federal law.
234 Definition of Telephone Corporation	Amend		The definition of a telephone corporation should be modified to include resellers. This section was enacted before resale of telecommunications services was contemplated.
248 Preemption	Add new section	X	Provide that any provision of the Public Utilities Act that is in conflict with the [ICC Termination Act] shall not apply to railroad corporations to the extent of that conflict. Provide that if any provision in the Public Utilities Act applicable to railroad corporations, or the application thereof to any person or circumstance, is federally preempted, the remainder of the Act is

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
303 CPUC Employee Conflict of Interest	Amend to narrow		severable. The purpose of this section would be to recognize the considerable extent to which federal law preempts state law in the economic and service regulation of railroads, while permitting the CPUC to continue to enforce state law that has not been preempted.
310 Quorum of Commission	Amend		Amend so that prohibitions apply only to Commissioners; give CPUC authority to authority to apply its Statement of Incompatibility to gubernatorial appointees. CPUC supports SB 595 (Burton) which addresses this issue.
314.5 Inspect and audit books of utility corporations on a 3-year or 5-year cycle, as applicable	Amend		Clarify validity of actions taken when there are only 3 sitting Commissioners (i.e. when 2 vacancies exist). Amend to 1) delete the reference to RR passenger commuter operations since currently there are no RR commuter operations that are subject to CPUC rate regulation and 2) eliminate the requirement to audit utilities every 3 or 5 years. Other provisions should be maintained until relevant markets are found to be sufficiently competitive.
451 Just and reasonable rates by utilities	Continue to review obligation to serve with objective of developing timetable for appropriate		Competition may warrant flexible application of the obligation to serve; however, continued regulation is necessary to protect consumers and the competitive process as California proceeds through the transmission from a monopoly to a competitive market for energy and telecommunications services.

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
453(a) & (c) No rate preference or advantage to any customer	amendment Possibly amend		Competition may warrant flexible application of the obligation to serve and reconsideration of other provisions; major revision now is premature since retail competition for local telephone service is just beginning, does not exist for residential and small commercial natural gas customers, and will not exist for electricity customers before January 1, 1998.
454 Rate change proposals	Amend		Amendment is warranted to 1) delete the reference in subdivision (a) to PU Code sec 454.1 which was repealed in 1996 and 2) reflect increasingly competitive energy and telecommunications markets and changing customer service options.
454.4 Gas rates for cogen technology projects	Amend to sunset	X	Mandatory cogeneration rate parity with UEG rates is inconsistent with a competitive energy market.
454.5 Authorization of electric corporation fuel cost increases	Delete		This section, added to address the oil crises in the 1970s, is a remnant of cost-of-service ratemaking and inconsistent with market oriented, incentive ratemaking mechanisms.
454.6 Rate parity for gas used in solar technology projects	Delete in 2001 (do not extend sunset)		Mandatory cogeneration rate parity with UEG rates is inconsistent with a competitive energy market; this section does not affect solar plants placed in operation after January 1, 1995, and sunsets in 2001.
454.7 Cogen technology projects - high priority for	Possibly amend		This section may be inconsistent with the evolution of competitive markets for energy services and requires further review. The CPUC's Natural Gas Strategy (see text) will

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
gas purchase			consider necessary "next steps" to further gas competition in California.
454.8 Recovery of costs for extension of utility plant	Delete		This section imposes a cost-of-service ratemaking procedure which is at odds with incentive ratemaking and the increasingly competitive energy market.
455 Rate changes after Commission action	Possibly amend		Increasing competition may warrant amendment; however continued regulation is necessary to protect consumers and developing competition as California proceeds through the transition from a monopoly to a competitive market for energy and telecommunications services.
457 Sliding scale of charges	Delete		The purpose of this section is unclear and duplicative of authority, contained in other sections, for the CPUC to set rates and require the filing of tariffs.
458 Prohibit common carrier transportation at rates below those filed	Amend to clarify that section does not apply to most RR corps	X	Due to federal preemption, this section should not apply to railroad corporations generally. However, this section should continue to apply to "non-network railroads."
459 Fraudulent rebates	Amend to clarify that section does not apply to most RR corps	X	Due to federal preemption, this section should not apply to railroad corporations generally. However, this section should continue to apply to "non-network railroads."
460 Long and short haul	Delete		This section appears duplicative of Section 461.5.

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
charges			
461 Prohibits telephone corp from charging longer distance charges than those incurred	Delete		The section is no longer necessary.
461.2 Inside wiring charges	Amend		This section should be modified to apply only to cost-of-service telephone corporations.
461.5 Anti-discrimination in transportation rates	Amend to clarify that section does not apply to most RR corps and to streamline procedures	X	Due to federal preemption, the only railroads to which this section should apply are those that are not part of the interstate network. To streamline procedural requirements, delete the words "in special cases, after investigation" in the first sentence of the second paragraph.
463 Electric or gas plant construction errors of more than \$50 million	Delete		This section, added to address costs associated with construction of the Diablo Canyon nuclear generation plant, is unnecessary in light of the CPUC's general ratemaking authority. With respect to electric generation, the section will be inconsistent with the restructured market's division between federal and state jurisdiction once new market structures (the ISO and PX) become operational.
465 Utility obligations re: contracting for custodial or janitorial labor	Consider Deleting		This section may be inconsistent with the evolution of competitive markets for utility services and requires further review.

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
466 Requirements re: wages for contracted custodial or janitorial labor per sec 465	Consider Deleting		This section may be inconsistent with the evolution of competitive markets for utility services and requires further review.
467 Department of Industrial Relations to enforce sec 466	Consider Deleting		This section may be inconsistent with the evolution of competitive markets for utility services and requires further review.
486 Common carrier file tariffs	Amend to clarify that section does not apply to most RR corps	X	Due to federal preemption, this section should not apply to railroad corporations generally. However, this section should continue to apply to "non-network railroads."
488 Carrier's schedules available for inspection	Amend to clarify that section does not apply to most RR corps	X	Due to federal preemption, this section should not apply to railroad corporations generally. However, this section should continue to apply to "non-network railroads."
489(a) Utility rates subject to inspection	Possibly amend		Increasing competition may warrant amendment; however continued regulation is necessary to protect consumers and developing competition as California proceeds through the transition from a monopoly to a competitive market for energy and telecommunications services.
491 30-day notice for rate changes by public utilities	Amend		This section already provides for exceptions to 30-day notice requirement but should be amended to expressly state that the CPUC has discretion to authorize exemptions for classes of

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
493 Common carrier file rates prior to operating	Amend to clarify that section does not apply to most RR corps	X	utilities or when relevant markets meet the test for sufficient competition. Due to federal preemption, this section should not apply to railroad corporations generally. However, this section should continue to apply to "non-network railroads."
494 Common carrier charge same rate as is on file with CPUC	Amend to clarify that section does not apply to most RR Corps	X	Due to federal preemption, this section should not apply to railroad corporations generally. However, this section should continue to apply to "non-network railroads."
495 Telephone corporations rates on file	Possibly amend		Increasing competition may warrant amendment; however continued regulation is necessary to protect consumers and developing competition as California proceeds through the transition from a monopoly to a competitive market for telecommunications services.
496 Carrier anti-trust exemptions	Delete		The Commission no longer has economic regulatory authority over common carrier truckers or most railroads. There should be no need for anti-trust exemptions in a competitive passenger carrier market.
526 Rates for express matter	Delete		This section deals with express corporations, which are no longer subject to CPUC jurisdiction
527 Reciprocal privileges between common carriers	Amend to update	X	References to the Interstate Commerce Commission (now terminated) should be updated. Reference to the Interstate

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
530 Rate concessions	Delete in part		Commerce Act (now repealed) should instead refer to federal law.
532 Utility rates; filing requirements; notice of rate changes	Continue to review with objective of developing appropriate amendment		Delete subdivision (b) and the last paragraph of subdivision (c) to reflect that the CPUC for the most part has no jurisdiction over common carriers of property. The emergence of increasingly competitive energy and telecommunications markets may warrant more flexibility than existing law provides
556 Common carrier interchange and transfer of passengers, freight and cars	Amend to delete references to freight.	X	The CPUC no longer has regulatory authority over common carrier truckers, and generally lacks authority to regulate the service of most railroads.
557 RR receive freight cars from other RRs	Delete		Due to federal preemption, the CPUC generally lacks authority to regulate the service of most railroads.
559 Common carrier joint rates, fares, and charges	Amend to exempt RR corps from this section	X	Due to federal preemption, the CPUC generally lacks authority to regulate the service of most railroads.
560 RR track switches and connections	Delete		Due to federal preemption, the CPUC generally lacks authority to regulate the service of most railroads.
701.3 Renewable set aside policy	Sunset in 1998 may be appropriate		State electric restructuring policy (AB 1890, Stats. 1996, ch. 854) subsumes prior policy re: electric resource planning. The

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
701.4 Electric resource acquisition diversity policy must value renewables	Sunset in 1998 may be appropriate		proposed sunset should coincide with AB 1890's implementation.
703 Interstate rates	Amend to update references to federal law	X	State electric restructuring policy (AB 1890, Stats. 1996, ch. 854) subsumes prior policy re: electric resource planning. The proposed sunset should coincide with AB 1890's implementation. The references to the Interstate Commerce Act (which has been repealed), to the Interstate Commerce Commission (which has been terminated), and to "excessive or discriminatory" rates should be replaced by more general references to federal law and federal agencies.
706 RR connect with other RRs at state line	Delete		Due to federal preemption, the CPUC generally lacks authority to regulate the service of most railroads.
707 RR corp. interurban rates	Delete		Due to federal preemption, the CPUC generally lacks authority to regulate the rates of most railroad corporations.
728 Fixing of rates after determination that adjustment is needed	Possibly amend		This section should be modified commensurate with the development of competition, but major revision now is premature since retail competition for local telephone service is just beginning, does not exist for residential and small commercial natural gas customers, and will not exist for electricity customers before January 1, 1998.
728.2 Yellow page directories	Delete in part		This section should be amended to delete all sections except (a); language in (a) which refers to other sections should also be

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
728.3 30-day notice re: public telephone removal	Possibly amend		deleted. This section may need to be amended in light of the FCC's recent payphone order, currently on appeal, which largely deregulated the payphone industry.
728.5 Establish rates for transportation; powers and duties of the Commission	Amend to clarify that section does not apply to most RR corps	X	Due to federal preemption, this section should not apply to railroad corporations generally. However, this section should continue to apply to "non-network railroads."
728.7 Notify customers of telco rate increase	Possibly amend		This section may need to be amended in light of recent federal actions relating to access charges, as well as developing competition in local telecommunications markets.
730 Facilities needed for service and fees to pay for providing	Amend to clarify that section does not apply to most RR corps	X	Due to federal preemption, this section should not apply to railroad corporations generally. However, this section should continue to apply to "non-network railroads."
731 CPUC increase rate of transportation carrier if deemed below costs of service	Delete		The Commission's general authority over common carrier rates (e.g. Section 728) should be sufficient to deal with any instances of rates that are too low.
732 Common carrier joint rates	Amend to exempt RR corps from this section.	X	Due to federal preemption, the CPUC generally lacks authority to regulate the rates of most railroads.

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
733 Common carriers joint rates	Amend to exempt RR corps from this section.	X	Due to federal preemption, the CPUC generally lacks authority to regulate the rates of most railroads.
739 Baseline rates for gas	Continue to review with objective of amending to minimize rate-making inequities		The system of baseline rates and allowances may need substantial revision in light of deregulation in some markets.
739.1 CARE program for electric and gas	Continue to review with objective of amending to minimize rate-making inequities		The system of baseline rates and allowances may need substantial revision in light of deregulation in some markets.
739.2 CARE program applicable to migrant workers and others	Continue to review with objective of amending to minimize rate-making inequities		The system of baseline rates and allowances may need substantial revision in light of deregulation in some markets.
739.3 Universal Service program	Move to Part 1, Article 8 (sec 871-878)		All provisions relating to Universal Service should be together in the PU Code.
739.9 Extends special telecommuting programs	Delete		The 3-year period covered in this statute ends this year, and the required report was submitted in December, 1995.

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
740 Allows for research & development	Amend		Utilities subject to incentive regulation should be excluded from this provision.
740.1 RD&D guidelines for electric & gas utilities	Amend		Electric and gas utilities subject to incentive regulation should be excluded from this provision.
740.3 State low-emission vehicle policies applicable to electrical & gas utilities	Consider deleting		This section may be inconsistent with the evolution of competitive markets for utility services and requires further review.
740.4 Utility programs to encourage economic development	Amend		This section may be inconsistent with the evolution of competitive markets for utility services and requires further review; at a minimum, utilities subject to incentive regulation should be excluded from provisions requiring reasonableness review.
740.6 Electric & gas utility participation in Dept of Economic Opportunity's pilot program re: low-income assistance counseling	Possibly amend		This section may be inconsistent with the evolution of competitive markets for electric and gas utility services and requires further review; note, however, that the section is permissive, not mandatory.
740.7 Application of discounted enterprise zone utility rates to closed or realigned federal military bases	Delete in 1999 (do not extend sunset)		This section may be inconsistent with the evolution of competitive markets for electric and gas utility services and requires further review; note, however, that the section is permissive, not mandatory, and sunsets on January 1, 1999.

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
740.8 Defines ratepayers "interests" for purposes of sec. 740.3 & 745.5	Amend or delete, as appropriate		At the minimum, this section should be amended to remove reference to sec. 745.5, which was repealed on January 1, 1997; if section 740.3 should be deleted, this section will become obsolete and should be deleted in its entirety.
763 Operation of sufficient motor power equipment of RRs	Amend to clarify that section does not apply to most RR corps	X	Portions of this section relate to safety. Nevertheless, this section could be made generally inapplicable to railroad corporations, so long as that safety authority is adequately provided elsewhere. This section should continue to apply to street railroad corporations and those railroads that are not part of the interstate rail network.
763.1 County-city petition CPUC on passenger rail service	Delete		Due to federal preemption, the CPUC generally lacks authority to regulate the service of most railroads.
764 Connections between two RR corps	Delete		Due to federal preemption, the CPUC generally lacks authority to regulate the service of most railroads. There are currently no street railroads subject to the CPUC's general jurisdiction. If, in the future, there are such street railroads, other more general statutes should be sufficient to achieve the goals of this section.
765 RR corp. connections	Delete		Due to federal preemption, the CPUC generally lacks authority to regulate the service of most railroads.
766.5 Billing for uncompleted calls	Amend		This section should simply prohibit telephone corporations from billing customers for uncompleted calls.

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
767 Use of utility equipment by other utility(ies)	Possibly amend		The FCC is expected to issue rules pertaining to access to utility rights-of-way soon, and it would be inefficient to modify this section before the FCC acts.
767.5 Utility pole usage	Possibly amend		The FCC is expected to issue rules pertaining to access to utility rights-of-way soon, and it would be inefficient to modify this section before the FCC acts
769 RR equipment necessary for freight service	Delete		Due to federal preemption, the CPUC generally lacks the authority to regulate the service of most railroads.
769.5 Disposal of RR passenger cars	Delete		Due to federal preemption, the CPUC generally lacks the authority to regulate the equipment of most railroads.
788 Inside wire annual report	Amend	X	This provision should apply only to providers of service, not to all telephone corporations.
792.5 Balancing account requirement	Amend		Amend to clarify that utilities subject to incentive regulation are excluded from this provision.
816 through 830 Utility stock & security transactions	Possibly amend or delete in part		These sections are under review. Some amendments or deletions may be warranted to recognize the development of competition and CPUC decisions exempting certain classes of providers from these sections.
851 Sales of utility property, mergers, consolidations, etc.	Amend		At a minimum, this section should be amended to clarify the concept of “necessary and useful” property (and remove the circularity between paragraphs 1 and 2). Additional amendment

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
854(b) through (h) CPUC approval of utility mergers	Amend	X	may be warranted to eliminate the need for CPUC approval of certain kinds of activities by utilities in competitive markets. Within the telecommunications industry, these provisions should be limited to local service providers subject to CPUC rate-setting jurisdiction.
882 Availability of advanced telco services	Delete		This section should be deleted since the CPUC has developed Universal Service rules. Although the Universal Service proceeding remains open to disburse funds, the purpose of the statute has been met.
1002(b) CPCNs for thermal power plants & electrical transmission lines	Delete		Provisions regarding factors to be considered prior to granting CPCNs for thermal power plants and electric transmission lines will be inconsistent with the restructured market's division between federal and state jurisdiction once new market structures (the ISO and PX) become operational.
1003 Supporting info required in electric & gas utility CPCN application.	Possibly amend		Some of the detailed requirements for an electric or gas utility CPCN application may no longer be necessary in light of the increasingly competitive markets for electric and gas utility services.
1005 CPUC issuance of certificate for construction	Amend	X	Delete provision that hearing must be held on request of "any person entitled to be heard". Existing law appears to be have been designed for an era of monopoly provision of utility services.

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft		Discussion/Rationale
		Language Attached		
1091 through 1102 Requirement for a "construction project board of consultants" for certain electric & gas utility plant additions	Possibly delete.			These sections, added in 1982 to govern electric plant additions in excess of 50 megawatts and gas utility plant additions in excess of \$50 million, may not be necessary in light of the CPUC's general ratemaking authority. With respect to electric generation, the section will be inconsistent with the restructured market's division between federal and state jurisdiction once new market structures (the ISO and PX) become operational.
1801 through 1812 Intervenor program	Continue to review with the objective of developing appropriate amendment			The CPUC has opened a Rulemaking and Investigation (R.97-01-009, I.97-01-010) to review the Intervenor program. A pre-hearing conference (PHC) was held on April 18, 1997 and a scoping memo is expected to issue by the end of June.
1823 CPUC review of computer model development	Delete			This section is unnecessary in light of the CPUC's general authority.
1824 CPUC verification of production cost models & financial planning models	Delete			This section is unnecessary in light of the CPUC's general authority.
1904(a) Fees	Amend to delete reference to section 1010			Section 1010 was repealed in 1996.
2739 through 2769.5	Delete			Federal law has preempted state regulation in this area.

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II -- Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
Passenger air carriers 2771 through 2775 Electric & gas utility customer priorities	Possibly amend		These sections may be inconsistent with the changing, increasingly competitive market for energy services and require further review.
2775.5 Electric & gas utility authority re: solar energy systems	Consider deleting		This section may be inconsistent with the evolution of competitive markets for energy services and requires further review.
2781 through 2790 Electric & gas utility home insulation assistance & financing	Possibly amend		These sections may be inconsistent with the changing, increasingly competitive market for energy services and require further review.
2811 through 2827 Private energy producers	Continue to review with the objective of developing appropriate amendment		These sections require further review in light of competitive developments in energy markets: the CPUC's Natural Gas Strategy (see text) will consider "next steps" to further gas competition in California; some provisions regarding electricity generation, transmission and sales will be inconsistent with the restructured electricity market's division between federal and state jurisdiction once new market structures (the ISO and PX) become operational.
2851 Solar energy systems	Delete		This section, added in 1978, required a CPUC study in 1980 and is no longer applicable.
2881, 2881.1 Deaf and hearing impaired telco	Amend		This provision should be amended to remove the reference to telephone corporations as entities that physically provide

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
services			telecommunications equipment in order to allow the CPUC to create a more cost effective program and to recognize the development of local competition.
2882 Conditions on enhanced telco services	Delete		This section is out-of-date as the CPUC complied with its mandate 10 years ago.
2882.3 Conditions on enhanced telco services	Amend		This section sunsets on January 1, 1998 but should be extended until the CPUC determines the state of competition in relevant markets. (See discussion in text.)
2882.5 Study less than one-minute increment billing	Delete		This section should be deleted, and in lieu of mandating this practice, the developing competitive markets can respond to consumer demand for billing in less than one-minute increments
2885 Study on cellular calls to land line customers	Amend		This section should be updated, as the privacy of cellular calls is still a technical problem and an issue of public concern.
2887 Boundaries of new area codes	Amend	X	This section should be amended to reflect current practice for establishing new area code boundaries, which involves CPUC approval of recommendations put forth by an industry working group monitored by the CPUC.
2889.5 Telco "anti-slammings" provisions	Amend	X	This section should be amended to eliminate internally inconsistent language and to clarify language susceptible to differing interpretations.
2889.6 Inclusion of	Possibly amend		The CPUC has no statutory authority to require non-telco

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
emergency info in telco directories			directory publishers to include emergency information in their directories, but believes such information should be included in all local telephone directories.
2889.8 Telco network reliability study	Amend	X	This section should be amended to delete subdivision (d) and to provide for periodic review of network reliability.
2891 Restriction on availability of customer info	Amend		This section should be amended to reflect the distinction in the 1996 Federal Telecom Act between customer list information and customer proprietary network information (CPNI).
4006 Private Carriers of Passengers Fees	Update to reflect existing fees, and eliminate subdivision (b)	X	As permitted by subdivision (b) the fees have already been increased to \$35 initial, and \$30 renewal, and the required reports submitted to the Legislative committees.
4007(b) Carrier identification numbers	Amend to clarify	X	Clarify that the CHP provides the PUC <i>only</i> with the names of private carriers of <i>passengers</i> .
4021(b) Fines	Delete subdivision (b)		Delete the operative date, the section has already become operative.
5001.5 Use of Transportation Rate Fund	Amend to reflect the 1996 amendments to sec. 5001, and the amendments proposed under sec. 5137 below.	X	Change current subdivisions (a) and (d) to refer to the household goods carrier industry (rather than the highway carrier industry). Delete current subdivisions (b) and (c), because they duplicate authority already contained in sec. 5001. Add a new subdivision to include as a permissible use of the funds the regulation of the safety and insurance of PUC-licensed carriers transporting 2 nd

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft		Discussion/Rationale
		Language Attached		
5002 Definition of Gross Operating Revenue	Amend	X		proviso goods. (See discussion under sec. 5137 below.) Amend to clarify that gross operating revenue includes all revenue derived from the transportation of property where the transportation is performed under a permit issued by the CPUC. (See discussion under sec. 5137 below.)
5003.3 Transfer of funds to Commercial Motor Carrier Safety Enforcement Fund	Delete			This section provided that a portion of the application fees paid by motor carriers of property be transferred to the Commercial Motor Carrier Safety Enforcement Fund. Motor carriers of property no longer pay application fees to the CPUC. Household Goods carriers, who still file their applications with the CPUC, have never paid a \$500 application fee into the Safety Enforcement Fund.
5009 Authority to inspect records	Amend to clarify	X		Amend to clarify that the transportation agencies referred to in this section are household goods carriers.
5012 Transportation Rate Fund Audit	Amend to delete obsolete provisions	X		Amend to delete the language dealing with the start-up of the audit program in 1993-1995.
5109 and related sections (5102, 5112, 5113 & 5133) Household Goods Carriers	Amend to eliminate the references to "office, store and institution furniture and fixtures"	X		Due to recent federal preemption, the CPUC no longer has economic and service regulatory authority over the transportation of used office, store and institution furniture and fixtures (so called "2 nd proviso goods").
5137 (also Vehicle Code) Transportation of 2 nd proviso goods by either	Add a new section to the PU Code and a corresponding	X		Due to federal preemption, a trucker with a motor carrier of property permit from the DMV can lawfully carry 2 nd proviso goods. Traditionally these goods were carried by PUC licensed

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached		Discussion/Rationale
household goods carriers or motor carriers of property.	section to the Vehicle Code.			household goods carriers. Carriers who have a PUC household goods carrier permit should not be <i>required</i> to obtain another permit from the DMV just in order to carry 2 nd proviso goods. The carriage of 2 nd proviso goods should be permissible under <i>either</i> a PUC household goods carrier permit or a DMV motor carrier of property permit.
5326 Adequate transportation system	Amend to clarify	X		The section should refer to "household goods carriers" rather than "highway carriers" to reflect the limited extent of the CPUC's jurisdiction.
5328 (b) License fee in lieu of tax	Amend to clarify	X		Delete the reference to "express corporation, freight forwarder, motor transportation broker" (all entities no longer regulated by the CPUC) and insert a reference to "household goods carriers". This change would more accurately reflect the fact that this section imposes a "Household Goods Carriers Uniform Business License Tax."
5329 Tax credit	Amend to clarify	X		Change the references to PU Code sec 4304 (repealed in 1996) to refer to PU Code sec. 5328. Clarify that the HHG carrier only receives a credit for a local license tax on business on which it pays a license fee to the CPUC. (This latter change is intended to coordinate with the proposal described above under PU Code section 5137.)
5331(a) Default; suspension or revocation of license	Amend to clarify	X		Change the reference to PU Code sec 4304 (repealed in 1996) to refer to PU Code sec. 5328. Delete the references to certificates of public convenience and necessity, as HHG carriers do not have

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
7531.5 Applications to abandon RR lines	Amend	X	such certificates. This section should be amended to ensure notification to the CPUC and other relevant state agencies of abandonment applications filed with the federal authorities.
7532 Authority to discontinue usage of RR line	Delete		Due to federal preemption, the CPUC generally lacks authority to regulate the service of most railroads.
7532.5 90 day notice of RR intent to abandon line	Delete		Due to federal preemption, the CPUC generally lacks authority to regulate the service of most railroads.
7902 Telco corp may sell rights with 2/3 stockholder support	Delete		This section should be deleted as it is not clear why a telecom corporation sale should require approval of 2/3 of stockholders, versus a simple majority.
7902.5 Telco corp report on business interests engaged in	Delete		This section should be deleted, and the CPUC has sought legislation to effectuate the change.
7930 Area code changes; requirements	Amend	X	In light of rapid number exhaustion, this provision should be amended to reduce the advance notice period to 18 months and the final notice to 12 months, while maintaining the requirement for 3 public participation hearings to be held within 6 months of the initial notice.
7931 Area code changes; notice	Amend	X	This section should be amended to reflect changes in network functionalities, and to accommodate different technical means of

Staff Draft 6/9/97

Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries

Part II – Table: Revisions to Existing Law Recommended by the CPUC

Section	Proposed Change	Draft Language Attached	Discussion/Rationale
			achieving area code relief.

**Report to the Legislature on Revisions of the Public Utilities Code
Resulting from Restructuring of Regulated Industries**

Part III – Draft Language

[to be submitted with 6/30/97 report]

Attachment 1

**Revisions to Existing Law
(by Law Revision Commission Policy Issue Categories)**

[to be submitted with 6/30/97 report]

Attachment 2

Stakeholders' Comments on CPUC Draft Report

[to be submitted with 6/30/97 report]